In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 1280

RY VIELLE LUKIN, MARY LUKIN, Administratrix of the estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABELLE VIELLE, THERESA JARVIS, MARTHA VIELLE GALLINEAUX,

Petitioners,

vs.

ANK L. CHATTERTON,

Respondent.

ETITION FOR WRIT OF CERTIORARI TO THE UPREME COURT OF THE STATE OF MONTANA

and

BRIEF IN SUPPORT THEREOF

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No.....

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABELLE VIELLE, THERESA JARVIS, MARTHA VIELLE GALLINEAUX,

Petitioners,

vs.

FRANK L. CHATTERTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA
and
BRIEF IN SUPPORT THEREOF

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, Mary Vielle Lukin, Mary Lukin, administratrix of the estate of John Vielle, deceased; Mary Vielle, Francis Vielle, Peter Vielle, Cecille Vielle Trombley, Isabelle Vielle, Theresa Jarvis, Martha Vielle Gallineaux, respectfully pray for a writ of cer-

tiorari herein to review a certain final decision of the Supreme Court of the State of Montana, being the highest Court of said State, the opinion and decision of said Court having been rendered and filed December 12, 1944 (R. 65-69), and a petition for rehearing having been filed (R. 69) and denied by said State Court on January 23, 1945 (R. 88), and by which said decision the said Court, affirming a decree of the Trial Court in a quiet title action, held Frank L. Chatterton was the owner of two hundred eighty acres of land situate on the Blackfeet Indian Reservation in Montana originally allotted by a trust patent to the Indian father of the above named petitioners, and that said petitioners, Indian wards of the United States and defendants in said action, had no right, title nor interest in said lands.

SUMMARY STATEMENT OF MATTER INVOLVED

Petitioners are Blackfeet Indian wards of the United States, residing on the Blackfeet Indian Reservation in Montana, and the administratrix and heirs of John Vielle, deceased, who died July 8, 1940, and who during his lifetime was a Blackfeet Indian ward of the United States residing on the said Indian Reservation (R. 4, 7).

On January 24, 1921, the United States issued a trust patent to John Vielle, a Blackfeet Indian ward of the United States, embracing three hundred twenty acres of land situate within the Blackfeet Indian Reservation, within the State of Montana, supplemental to a similar trust patent theretofore issued to him on

May 23, 1918 (R. 37, 38). The trust provisions of this patent (R. 37, 38) state:

> "Now know ye, that the United States of America, in consideration of the premises, has allotted, and by these presents does allot, unto, the said Indien, the land above described, and hereby declare that it does and will hold the land thus allotted (subject to all statutory provisions and restrictions) for the period of twenty-five years, in trust for the sole use and benefit of the said Indian, and at the expiration of said period the United States will convey the same by patent to said Indian in fee, discharged of said trust and free from all charge and incumbrance whatsoever; but in the event said Indian dies before the expiration of said trust period, the Secretary of the Interior shall ascertain the legal heirs of said Indian and either issue to them in their names patent in fee for said land, or cause said land to be sold for the benefit of said heirs as provided by law; and there is reserved from the lands hereby allotted, a right of way thereon for ditches or canals constructed by the authority of the United States."

On January 25, 1921, the United States issued what is referred to as a fee patent embracing the lands included in the preceding trust patent (R. 23). The latter patent after referring to an order of the Secretary of the Interior directing a fee simple patent to issue to John Vielle for the same land as is described in the trust patent to said John Vielle, contains the following provisions (R. 24):

> "Now know ye, that the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said claimant and to the heirs of the said claimant the land above described; **to have to hold the same, together with all the rights, privileges,**

immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States." (Emphasis supplied.)

The latter patent was sent to the office of the Indian Superintendent of the United States at Browning, Montana, where it has remained at all times since, manual delivery of same never having been made to nor accepted by John Vielle (R. 23, 38-41, 48). John Vielle could sign his name but could not otherwise read nor write (R. 48).

Apparently upon learning in April, 1931, that a fee patent was in the office of the Indian Superintendent, John Vielle on April 10, 1931, made and filed in the office of the Blackfeet Indian Agency an application under oath requesting cancellation of the fee patent and reciting that he had never applied for nor wanted such patent (R. 40, 41). On March 30, 1932, Indian Commissioner Rhoads notified the Blackfeet Indian Agent that because John Vielle had made application in his own handwriting for a fee patent there were no grounds for cancellation of same (R. 46). Thereupon, on Sept. 12, 1932, John Vielle filed another affidavit and request for cancellation of patent reciting substantially that when he signed the application he did not know he was signing such, that he thought he was signing a partnership paper with two named persons to go into the oil business, that he could not speak the English language fluently, could write his name but not read nor write any other English words,

and directed attention of the government to the fact that when he learned there was a fee patent at the Agency Office he refused to accept same (R. 48, 49). This affidavit and request were transmitted by the Indian Superintendent to the Commissioner of Indian Affairs with a recommendation for further consideration with the view of cancellation of the fee patent (R. 50). This latter request and affidavit were returned to the Indian Superintendent with a letter from the Indian Commissioner stating, in substance, that the affidavit of John Vielle to the effect he did not know he was making application for a fee patent did not vitiate his formal application and, therefore, there were no grounds for cancellation of the patent (R. 50). The duplicate original of the alleged sworn application for fee patent of John Vielle shows no signature of any officer authorized to administer oaths and appears to be an unsworn statement (R. 42, 43).

On July 3, 1929, the treasurer of Glacier County executed a tax deed to Glacier County, Montana, as the purchaser at a purported tax sale of two hundred eighty acres of the above mentioned land for taxes assessed by Glacier County against said land for the year 1921 and were not paid by John Vielle (R. 27-29). October 22, 1940, Glacier County executed a quit-claim deed to Frank L. Chatterton embracing this land (R. 25-27), and on November 29, 1941, said Chatterton, as plaintiff, commenced an action against the heirs of John Vielle, your petitioners, as defendants, alleging, in effect, his ownership and that defendants claimed some right, title or interest in the land ad-

verse to plaintiff, which claims of defendants were groundless and without right. Substantially, he prayed that defendants be required to set forth the nature of their claims, that it be adjudged he had valid title to the land, that defendants had no interest or estate therein, and that plaintiff be given relief generally (R. 2, 3).

Defendants filed an answer and cross-complaint in the action (R. 3-10) wherein they denied plaintiff owned the land, alleged defendants' ownership as heirs of John Vielle (R. 3, 4), and by cross-complaint alleged specially that on May 23, 1918, a trust patent embracing the land had been issued to John Vielle wherein the United States expressly agreed, conformably to statute, to hold the land allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian, John Vielle, and at the end of twenty-five years convey same to him in fee, discharged of the trust and free from all charge and encumbrance whatsoever, and that without application therefor and without his consent the United States, on January 25, 1921, issued a patent in fee to John Vielle, which was never in fact delivered to him and which he expressly refused to accept, and which patent was issued contrary to law and was void (R. 4, 5, 7). The cross-complaint further alleged an attempted assessment and levy of taxes against said land by Glacier County, that said lands were not taxable and the tax assessment and levy were wrongful and void and that the attempted sale of the land to Glacier County for unpaid taxes and the attempted sale to plaintiff were wholly invalid (R. 5-8). The

cross-complaint further alleged failure of Glacier County to comply with the requirements of the statutes of Montana precedent to a valid tax assessment, levy and sale for delinquent taxes (R. 8-9) and prayed that defendants be adjudged owners of the land and their title thereto quieted (R. 9) and incidental relief.

The plaintiff demurred to the answer and cross-complaint assigning insufficiency thereof to state a defense or a cause of action (R. 10), which was taken under advisement by the Court (R. 10) and apparently was never ruled upon.

Thereafter the plaintiff Chatterton filed an affidavit, purportedly under Section 2214, Revised Codes of Montana, specifying sums of money paid as the purchase price of the land, taxes, and for improving and preserving the property (R. 10-12) and the Court ordered defendants to deposit the total sum of $1,270.51 as prayed in the affidavit or show cause for not doing so (R. 12). The defendants moved to quash the order to show cause on the grounds of legal insufficiency of the affidavit to support the order (R. 13, 14), and also made answer to the order wherein defendants substantially alleged the facts of the Indian wardship of John Vielle, the issuance of the trust patent, issuance of the so-called fee patent without his application, his refusal to accept the latter patent, the nontaxable character of the land as restricted Indian land under the special treaty of 1887 between the Blackfeet Tribe and the United States, and the consequent invalidity of the taxes levied by Glacier County, and alleged the invalidity of the tax proceedings

precedent to the taking of the tax deed to the land by Glacier County, plaintiff's predecessor, and set forth defendants' ownership of the lands as Indian heirs of John Vielle (R. 14-18).

Hearing upon the order to show cause was held April 22, 1942 (R. 21-58), and plaintiff introduced the fee patent issued to John Vielle (R. 23), a quit-claim deed to the land from Glacier County (R. 25, 26), a tax deed describing the same land executed by Treasurer of Glacier County to Glacier County for purported delinquent taxes against the land (R. 27-29), a contract of purchase between Chatterton and Glacier County for the land (R. 30, 31). Testimony was given on behalf of plaintiff concerning payments of taxes and improvements upon the land (R. 32-35). The defendants introduced in evidence the trust patent from the United States to John Vielle (R. 37, 38), the affidavits of John Vielle, constituting part of the official records of the Indian Department (R. 40, 47-49), reciting he had never applied for a fee patent, and his refusal to accept same, nondelivery thereof to him, his request for cancellation, etc., hereinabove more particularly described. The plaintiff then introduced in evidence a purported application for fee patent bearing the signature of John Vielle (apparently unsworn to) (R. 42-44) and copies of letters from the files of the Indian Office indicating approval of application for fee patent and refusal by the department to cancel same at Vielle's request (R. 42-46, 50).

October 6, 1942, the County District Court made an order filed October 13, 1942, requiring defendants

to deposit in that court $1,270.51 to the use of the plaintiff within thirty days and providing that should "defendants fail to make the deposit decree quieting title to said lands in plaintiff shall be entered herein" (R. 18, 19). The defendants having failed to make the deposit the court, upon plaintiff's application, entered the defendants' default in the action (R. 61, 62) and rendered and entered a judgment by default against defendants adjudging plaintiff to be the owner of the land and that defendants have no title or interest of any kind in the land (R. 19, 59-61).

At the time of the rendition of this default judgment no precedent action had been taken by the county district court upon the demurrer of plaintiff to answer and cross-complaint of the defendants (R. 10, 3-10), nor was there filed any reply of plaintiff raising any issues on the affirmative allegations of the cross-complaint.

Defandants appealed from the judgment to the Supreme Court of Montana (R. 63) and the cause having been submitted for decision to said Supreme Court on September 22, 1944 (R. 65) that Court affirmed the judgment December 12, 1944 (R. 65) and filed the opinion of the Court December 12, 1944 (R. 65-69). Petition for rehearing was filed January 9, 1945 (R. 69) and denied January 23, 1945 (R. 88). On April 20, 1945, Associate Justice of the Supreme Court, Honorable Wm. O. Douglas, extended the time to and including May 18, 1945, for filing their petition for a writ of certiorari in this cause by petitioners (R. 89).

The Supreme Court of Montana held:

1. That affidavits of Indian patentee John Vielle filed by him and constituting part of the records of the Indian Department and showing that he had made application for a fee patent under a mistake of fact, that he was not competent to administer his own affairs, and requested cancellation of the fee patent when he learned of its issuance, offered by defendants in evidence at the hearing on the order of the county district court to show cause, was incompetent evidence because it constituted a collateral attack upon a fee patent (R. 66).

2. That manual delivery of the fee patent was not accepted by the Indian patentee is of no significance as the patent required no delivery to be effective (R. 66).

3. That the application of John Vielle converted his trust patent into a fee patent and upon issuance of the fee patent to him the land embraced therein became subject to taxation and sale by the State of Montana and the conveyance by Glacier County to Chatterton of the land (purchased at the tax sale by Glacier County) conveyed title to Chatterton and the decree of the lower court (adjudging Chatterton to be the owner of the land in fee simple) was proper (R. 67-69).

4. That it was unnecessary for the Montana Supreme Court to pass upon the question of the sufficiency of the evidence to make a case under Section 2214 Revised Codes of Montana, calling for a deposit in court by the alleged true owner for the use of the

tax deed grantee because the appellants (petitioners) put their defense on the ground that the lands were exempt from state law levies and sale upon non-payment of taxes because such defense was untenable (R. 68, 69).

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of Section 237 of the Judicial Code, as amended, 28 U.S.C.A. Section 344. The grounds therefor are:

1. The Supreme Court, the highest court of the State of Montana in which a decision could be had, on December 12, 1944, rendered a decision (which became final on January 23, 1945, R. 65-69, 88), confirming the validity of an assessment, levy and sale, for taxes by a state agency of lands, allotted to a reservation Indian, contrary to the provisions of the Congressional Indian Allotment Act of 1887, 25 U.S.C.A. Section 348, as amended, 25 U.S.C.A. 349, and contrary to the special agreement made between the United States and the Blackfeet Indian Tribe, set forth at length in Volume 25 of the United States statutes at large, page 113, and which decision unless annulled will deprive petitioners of their property without due process of law and deny them privileges and immunities in contravention of section 1 of amendment 14 of the Constitution of the United States.

The aforementioned decision and opinion of the court appears in the record on pages 65 to 69, and 88, and is reported in 154 Pac. (2d) 798, but has not yet

been reported in the official published reports of the Montana Supreme Court.

The questions were raised in the following manner. In the county district court, the court of first instance, the plaintiff, Mr. Chatterton, alleged he was the owner of the land involved and alleged the defendants, petitioners here, claimed some right, title or interest in the land adverse to plaintiff (R. 2) and that defendants' claims were without right (R. 3). The answer and cross-complaint of defendants denied plaintiff's ownership (R. 3) and alleged defendants were the owners of the land (R. 4). The defendants further pleaded:

(a) The issuance, by the United States in 1918, of a trust patent to their father under the acts of congress wherein and whereby the land was allotted to their Indian father and provided that the United States would hold the land in trust (subject to all statutory provisions) for 25 years in trust for the sole use and benefit of said Indian and at the expiration of such period convey the land by patent to said Indian in fee discharged of the trust and free from all charge and encumbrance (R. 4, 5).

(b) That on January 5, 1921, a fee patent was issued to the land without the Indian father having applied for same, that same was never delivered to nor accepted by him, and was issued contrary to the law and was void (R. 5).

(c) That said allotted lands were not subject to taxation by the State of Montana and during the trust period the said State taxed said lands and sold same

for delinquent taxes and then sold the land to plaintiff, and that said purported assessment and levy of taxes and said sales were void as in contravention of the statutes of the United States under which said Indian held the land and under which defendants as his heirs claimed the land (R. 4-8).

(d) That plaintiff knew at all times that said Indian, John Vielle, and his heirs, respectively, claimed the land (R. 8).

The questions were again presented to the same district court by motion to quash the order of that court to show cause directed to said defendants (R. 12-14) and by answer of defendants to said order (R. 14-18) and at the hearing on the order (R. 21-58) by introduction in evidence by defendants of the supplemental trust patent issued to their Indian father (R. 37, 38) containing the express agreement of the United States to hold the land in trust and of affidavits of John Vielle constituting part of the official records of the Indian Department (R. 39, 40, 47-49) wherefrom it appears no application for a fee patent was in fact made by said Indian, no delivery nor acceptance thereof, and a request by him for its cancellation, and by the testimony of the clerk of the Blackfeet Indian Agency Office that the fee patent to the Indian had never been delivered to the Indian and still remained in the custody of the Indian Office (R. 35, 36, 38, 39).

The said district court by its orders requiring a cash deposit as a condition of defendants being permitted to prove the allegations of their answer (R. 18, 19)

and by rendition and entry of a default decree adjudging plaintiff's ownership of the land, in effect, ruled against defendants on all questions presented (R. 19-21, 61, 62).

On appeal to the Supreme Court of Montana the legal questions were presented by specifications of error in the brief of appellants, petitioners here, to the effect that the district court had erred in holding that the allotted lands were subject to taxation and sale by he State of Montana and that the Indian lost his title by virtue of a tax levy and sale of the property for delinquent taxes thereon, and further erred by requiring the deposit of money by defendants of the amount of taxes and value of improvements as a condition precedent to defendants being permitted to offer evidence under their answer and cross-complaint to show the land was non-taxable Indian land, and in rendering a default decree against them by reason of their failure to deposit said money. That appellate court held against the said appellants on the questions presented by its affirmance of the decree of the district court and holding that the land involved was taxable and had been lost to the Indian and his heirs (said appellants) by the tax levy and sale by the State of Montana for non-payment of the taxes (R. 65-69). (See appendix hereto.)

The questions involved are substantial in that they involve the present ownership of a tract embracing 280 acres of land by petitioners as Indian heirs of a deceased Indian allottee and involve points of law of importance generally to Indian allottees of land on the Blackfeet Indian Reservation and their heirs.

That this Court has jurisdiction to review the decision of the Supreme Court of Montana in cases of this character is manifest.

Ward v. Love,
253 U.S. 17, 64 L.ed. 751,

Longest v. Langford,
276 U.S. 69, 72 L.ed. 471.

QUESTIONS PRESENTED

1. Whether an allotment of land on the Blackfeet Indian Reservation made to a Blackfeet Indian under a trust patent issued by the United States in 1918 to such Indian may be taxed by the State of Montana during the twenty-five year trust period and sold upon non-payment of such taxes by the Indian allottee where such trust patent contains the express promise of the United States to hold the allotted land for the period of twenty-five years in trust for the sole use and benefit of said Indian, or in case of his decease, of his heirs, and at the expiration of said period to convey same by patent, to said Indian, or his heirs, in fee discharged of said trust and free and clear of all charge or encumbrance whatsoever, and where by special agreement between the United States and the Blackfeet Indians made prior to said allotment to the Indian it was expressly agreed by the United States that upon approval of an allotment to a Blackfeet Indian by the Secretary of the Interior he shall cause to issue a patent to the land in the name of the allottee, which patent shall be of the legal effect and declare that the United States does and will hold the lands thus allotted for the period of twenty-

five years in trust for the sole use and benefit of said Indian, or in case of his decease, of his heirs, and where approximately three years after the issuance of the trust patent a fee simple patent was issued to said Indian granting the same land to him and his heirs and containing the following provision: "to have to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever." The latter patent was issued upon a written application for a fee simple patent bearing the signature of the Indian who could not otherwise read or write, was never actually delivered to nor accepted by the Indian, and has remained at all times in the custody and control of the Indian Department, and when the Indian learned the patent had issued protested same and filed affidavits with the Indian Department reciting he had never made application for the fee simple patent, that he could sign his name but not read or write English words, and that when he signed the application he understood he was signing an agreement to go into the oil business with two persons who he named and requested the fee simple patent be cancelled. The Blackfeet Indian Office recommended the patent be cancelled, but the Indian Commissioner held the fact the Indian did not know he was signing an application for patent did not vitiate the formal application and cancellation was refused. At the time of the issuance of the trust and fee patents mentioned there was also in general effect a general statute of the United States

which, among other things, provided for issuance of trust patents to Indians under which the United States agreed to hold the land in trust for the Indian for a twenty-five year period, which statute was passed by Congress in 1887, 25 U.S.C.A. 348, and was amended May 8, 1906, 25 U.S.C.A. 349, to provide, among other things, "that the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed." Petitioners contend the land is non-taxable.

2. Whether a delivery to the Indian of a fee simple patent to an allotment of land held in trust by the United States is required under the statutes of the United States to make said patent fully effective, between the United States and the Indian so as to vest a fee simple title to said land in the Indian. Petitioners contend delivery essential.

3. Whether in a quiet title action by a purchaser of land from a county bought by such county at a tax sale of a tract of land for delinquent taxes in which action Indian heirs of a deceased Blackfeet Indian ward of the United States claiming ownership of land allotted under a trust patent issued to said Indian ward by the United States were joined as defendants, such Indian heirs had the right to show by evidence that a purported fee simple patent to said land was issued without a valid application for such

patent by the Indian patentee by affidavits executed and filed with the Indian Department as part of its official records by the patentee prior to his death wherein he stated he had made no application for such patent, that same had never been delivered to him, that he was not competent, that when he signed the application he did not know it was for a fee patent but that he was signing partnership papers with two named persons, and that as soon as he learned a fee patent had been issued he refused to accept it, that he did not want a fee patent, that he had never mortgaged any part of the land, and in which affidavits he requested cancellation of the fee patent and by testimony of the custodian of the fee patent showing that same was still in the possession of the Indian Department and had never been actually delivered to the Indian patentee or his heirs. Petitioners contend the invalidity of the fee patent could be so shown and their ownership be established by the trust patent and acts of Congress under which same was issued and Petitioners contend they were deprived of privileges and immunities and of their property without due process of law.

4. Whether petitioners, Blackfeet Indian heirs of their deceased Indian father, were denied a privilege or immunity and deprived of their property without due process of law by rendition and entry by the state court of a default decree against them, as defendants, in a quiet title action involving land originally allotted their father wherein they had filed an answer and cross-complaint substantially alleging their ownership of the land and that plaintiff's claim

of title was invalid as being based upon a sale of the land for unpaid taxes unlawfully levied by the State of Montana upon Indian land at the time exempt from taxation by virtue of express agreement made between the United States and the Blackfeet Indians; and which default decree was rendered because defendants had failed to deposit money required by the state court by an order requiring the defendants to deposit in court to plaintiff's use the sum of $1,270.51, representing the amount paid by plaintiff to Glacier County as the purchase price of the land, the amount of taxes levied thereon and the amount expended by plaintiff in improving the land. At the time the said court's order was made Section 2214, Revised Codes of Montana, among other provisions, contained the following provisions:

> "Provided further that in any action now pending, or hereafter brought to set aside or annul any tax deed, or to quiet title, or to determine the rights of such purchaser, including the county, or his successors, to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor upon filing an affidavit may obtain from the court an order directed to the person claiming to own the property, or to have any interest in or lien upon said property, or a right to redeem the same, or claiming rights hostile to the tax title (which said person is herein, for convenience, called the true owner), commanding him to deposit in court, to the use of the tax purchaser or his successors, the amount of all taxes, interest and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him, and the amount of all sums

reasonably paid hereafter by said purchaser or his successors after three years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties and improvements is alleged by the plaintiff and shall appear in said order, or to show cause on a date to be fixed in said order, not exceeding thirty days from the date thereof, why such payments should not be made," and

"Upon the hearing of the order to show cause the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time, not exceeding thirty days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right or redemption, and thereupon, irrespective of any irregularities, defects or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures makes said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors, and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner. If such payment shall be made into court, and said true owner shall be successful in said action and said tax proceeding shall be held void, said sum shall be paid to the purchaser or his successors."

REASONS FOR GRANTING PETITION

The Supreme Court of Montana held that the issu-

ance of the fee patent to the Indian removed the exemption of the land from taxation, notwithstanding the conceded non-delivery of the fee patent to the Indian and that the affidavits made by the Indian appearing in the records of the Indian Department disclosed that the Indian could not read nor write and that the application for the fee patent was signed by the Indian under the mistake of fact that it was a partnership agreement to go into the oil business with two named persons, and cancellation thereof was requested by the Indian.

The decision of this Court in Carpenter v. Shaw, 280 U.S. 363, 74 L.ed. 478, 481, held that where land granted an Indian under an agreement between the United States and the tribe whereby such land was inalienable by the Indian and exempt from taxation for a specified period of time, the subsequent removal of the restriction against alienation of the land by Act of Congress did not render the land granted the Indian subject to taxation by the State during the original period provided for the exemption as the tax exemption was a property right of the allottee and was not subject to repeal by later congressional legislation.

The decision of this Court in Choate v. Trapp, 224 U.S. 665, 56 L.ed. 941, held that a subsequent act of Congress removing restriction on alienation and declaring land of Indians from which restrictions had been removed should be subject to taxation did not render taxable land of Indians granted to an Indian pursuant to agreement or statute pertaining to an Indian Tribe where a consideration, by way of tribal

relinquishment of a right of occupancy of land, passed from the tribe. Under the special agreement between the Blackfeet Tribe and the United States set forth in 25 Statutes at large 113, the Blackfeet Tribe relinquished its right of occupancy to certain lands.

The decision of this Court in Ward v. Love County, 253 U.S. 17, 64 L.ed. 751, held that an allottee who paid taxes on land to a state could recover same where the lands were originally granted the Indian pursuant to agreement between the United States and an Indian Tribe, and were immune from taxation notwithstanding a subsequent act of Congress declared the land taxable after removal of restrictions.

The decision of the Montana Court is probably in conflict with the foregoing decisions.

The Supreme Court of Montana held that the defendants could not in this action show that the fee patent was void by reason of same having been issued without a valid application for same having been made by the Indian trust patentee (R. 65, 66) as same would constitute a collateral attack upon the patent.

This Court in Borax Consolidated, Ltd., v. City of Los Angeles, 296 U.S. 10, 80 L.ed., held that in a quiet title action a party thereto could attack a patent from the United States to land as being void where such patent was issued in a case where the Interior Department had issued same without the right to convey same.

This Court in Wright v. Roseberry, 121 U.S. 488, 30 L.ed. 1039, held a patent could be attacked colla-

terally where the patent was issued in violation of a statute.

The decision of the Montana Supreme Court is probably in conflict with the foregoing decisions of this Court.

The Montana Supreme Court held that the non-delivery and non-acceptance of the fee patent by the Indian trust patentee was of no significance as the issuance of the fee patent was conclusive upon him (R. 66). The general allotment Act, 25 U.S.C.A., Section 348, expressly requires the fee patent to be delivered to the allottee entitled thereto.

The questions involved are of importance to many Indian members of the Blackfeet Indian Tribe claiming to own land under similar facts and circumstances as are involved in the decision of the Supreme Court of Montana in this case and multiplicity of actions on the part of such Indians will be avoided if this Court accept jurisdiction and determine the questions involved.

For these reasons it is respectfully submitted that this petition should be granted and the decision of the Supreme Court of Montana be annulled.

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Attorney for Petitioners.

S. J. RIGNEY,
Cut Bank, Montana,
Of Counsel for Petitioners.

The, undersigned, attorney for the Petitioners named in the foregoing petition, hereby certifies that said petition is well founded and not interposed for delay.

E. J. McCABE,
Attorney for Petitioners.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.....

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABELLE VIELLE, THERESA JARVIS, MARTHA VIELLE GALLINEAUX,

Petitioners,

vs.

FRANK L. CHATTERTON,

Respondent.

BRIEF IN SUPPORT OF PETITION
JURISDICTION

The jurisdiction of this Court is invoked under section 237 of the judicial code as amended, 28 U.S.C.A. 344. The decision of the Supreme Court of Montana, the highest court of said state, affirming the judgment of the lower state district court, was

entered December 12, 1944 (R. 65-69). Petition for rehearing was denied January 23, 1945 (R. 88). Extension of time to and including May 18, 1945, for filing petition for certiorari was granted by Mr. Justice Wm. O. Douglas on April 20, 1945 (R. 89).

The trial court, the District Court of Glacier County, Montana, by decree, adjudged Frank L. Chatterton to be the owner of a tract of land originally allotted to the Indian father of petitioners under a special agreement between the United States and the Blackfeet Indian Tribe, 25 United States Statutes at large 113, and the Indian Allotment Act of 1887, 25 U.S.C.A. 348. The trial court construed the foregoing statutes and the amendment to the Indian allotment act, 25 U.S.C.A. 349, and in effect held that the allotted land was subject to taxation and sale by the State of Montana. Frank L. Chatterton based his title on a tax levy and sale of the lands by the said state. The decree of the trial court was rendered and entered November 18, 1942 (R. 19-21). The decision of the trial court was specified as error on appeal from the decree to the Montana Supreme Court upon the grounds that the decree was contrary to the law and the evidence, and that the lands involved were immune from taxation by the State of Montana. (See appendix for specifications of error in the State Supreme Court.) The State Supreme Court construed the foregoing United States Statutes and held the land was subject to taxation and sale by the state. The opinion of the State Supreme Court appears in the record on pages 65 to 69, and is reported in 154 Pac. (2d) 798, but not yet reported in the published Mon-

tana Reports.

The jurisdiction of this court in cases of the character here involved has been favorably invoked in cases of this character as will appear from decisions of this court hereafter cited in the argument and by reference to the following decisions involving statutes pertaining to Indians.

Ward v. Love,
253 U.S. 17, 64 L.ed. 751,

Longest v. Langford,
276 U.S. 69.

STATEMENT OF FACTS

The facts are stated in the petition, pages 2 to 11. We emphasize that the facts, in brief, are the State of Montana taxed, and sold for the unpaid taxes, a tract of land allotted to the Blackfeet Indian father of the petitioners at a time when such land was exempt from taxation both by virtue of a special agreement between the United States and the Blackfeet Indian Tribe and under the general Indian allotment act of the United States, and that the claim of ownership of Frank L. Chatterton is based solely on the said tax sale.

SPECIFICATIONS OF ERROR

The Supreme Court of Montana erred as follows:

(a) In holding that by reason of the issuance of the fee patent to John Vielle the land theretofore allotted to him under the trust patent became subject to taxation and sale by the State of Montana for the

reason that said land was not taxable (R. 65-69, and appendix hereto).

(b) In holding that delivery of the fee patent to John Vielle was not necessary to its validity, for the reason that actual delivery of a fee patent to the Indian grantee is expressly required by the Indian Allotment Act of 1887, 25 U.S.C.A. 348 (R. 66 and appendix hereto).

(c) In holding that it could not be shown by the affidavits of John Vielle constituting part of the official records of the Indian Allotment of the United States that he had never made a valid application for the issuance of the fee patent to him (R. 65-67 and appendix hereto).

(d) In holding that John Vielle had made a valid application for the issuance to him of the fee patent (R. 65 and appendix hereto).

(e) In affirming the default decree of the trial court adjudging Frank L. Chatterton the exclusive owner of the land involved (R. 65-69 and appendix hereto).

(f) In refusing to pass upon the question of the sufficiency of the evidence to make a case under section 2214 of the Revised Codes of Montana, and the question of the validity of the order of the trial court requiring the deposit of money by defendants for the use of the plaintiff and for the entry of decree quieting title to the land in plaintiff (Frank L. Chatterton) in the event defendants failed to make such deposit (R. 18, 19, and appendix hereto).

SUMMARY OF THE ARGUMENT

1. The tax levied and sale of the land for the unpaid taxes were wholly void and Frank L. Chatterton acquired no valid title to the land under his quitclaim deed from Glacier County.

2. Valid application for a fee patent was not made by the Indian patentee.

3. The order of the trial court requiring deposit of money by defendants under section 2214 Revised Codes of Montana and entry of default decree against defendants and affirmance of the decree by the Montana Supreme Court deprived the defendants of their property without due process of law.

ARGUMENT

1. The tax levied and sale of the land for the unpaid taxes were wholly void and Frank L. Chatterton acquired no valid title to the land under his quitclaim deed from Glacier County.

In 1886 representatives of the United States made an agreement with the Indians of the Blackfeet Tribe, and other tribes, which provided for the relinquishment by said Indians of their right to occupancy of certain described lands in Montana and their consenting to the reduction of the size of their reservation area, and provided that allotments might be made of lands to individual Indians within the reservation. Article VI, 25 Stat. 113 contained the following provision:

"Upon the approval of said allotments by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that

the United States does and will hold the lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the Territory of Montana, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of said lands, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

This agreement was ratified by congressional legislation in 1888, 25 United States Statutes at large 113, Vol. 1 pages 604-608, Indian Affairs Laws and Treaties, second edition, Kappler.

By act of February 8, 1887, 25 U.S.C.A. 348, Congress passed the general Indian allotment law which contained a provision for the issuance to Indian land allottees by the Secretary of the Interior of patents and reciting as follows:

"Which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. Provided, That the President of the United States may in

any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

By act of Congress, known as "Enabling Act," approved February 22, 1889, 25 United States Statutes at large 676, authorization was granted for inhabitants of certain territory of the United States, now in part embraced within the exterior boundaries of the State of Montana (Revised Codes of Montana, pages 59-69) to become states. Paragraph "First" of Section 4 (page 60 Revised Codes Montana) of the act provides, pertinently, as follows:

"That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to *** all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; *** that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from

taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of Congress may prescribe."

It will be observed the "Enabling Act" expressly limits the power of the state of Montana to tax such lands as are "owned and held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe."

It is shown by the record that the trust patentee, John Vielle, was a member of the Blackfeet Tribe of Indians (had not severed his tribal relations), had at all times resided upon the Blackfeet Indian Reservation, was an Indian allottee of the lands involved under the trust patent (R. 4, 5). It would seem that by these terms of the "Enabling Act" the taxes attempted to be levied in 1921 and the sale of the land for same in 1922 were wholly void.

By agreement of September 26, 1895, between the United States and Blackfeet Indians, the said tribe relinquished rights to certain lands theretofore held by them. This agreement provided, substantially, among other things, that when allotments were made in severalty to the Indians the provisions of the agreement

of 1887 (25 Stat. 113), above mentioned, would be in effect, thereby evincing the intention that the patents issued would be trust patents containing the twenty-five year trust period provision (29 Statutes at large 357, 358, Vol. 1 pages 604-609 Kappler's Indian Affairs, Laws and Treaties, second edition).

The last clause of the "Enabling Act" expressly provides for immunity of Indian lands from taxation where granted under congressional grant containing a provision exempting such lands from taxation. In every grant of land by the United States to an Indian to be held in trust there exists the implied provision for exemption of the land from taxation for the trust period.

> Glacier County v. United States,
> 99 F (2d) 733, (Headnote 3 and paragraph 3 page 734) and cases cited therein.

In Ward v. Love County, 253 U.S. 17, 64 L.ed. 751, at 757, this Court referred to the act of congress enabling Oklahoma to become a state which contained provisions, in part similar to the above mentioned Montana "Enabling Act," exempting from taxation "such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States government, or by Federal laws during the force and effect of such treaties or Federal laws." The Court held that where land granted an Indian by special agreement was exempt for a stated time from taxation, such exemption became a vested right in the Indian and could not be repealed or impaired by an act of congress passed subsequently and which de-

cleared that all lands from which restriction on alienation by the Indians were removed were taxable as such subsequent legislation would destroy vested property rights guaranteed by the Constitution of the United States. Justice VanDevanter in delivering the opinion of the Court (64 L.ed. 758) said:

> "As these claimants had not disposed of their allotments, and twenty-one years had not elapsed since the date of the patents, it is certain that the lands were nontaxable. This was settled in Choate v. Trapp, supra, and the other cases decided with it; and it also was settled in those cases that the exemption was a vested property right arising out of a law of Congress and protected by the Constitution of the United States. This being so, the state and all its agencies and political subdivisions were bound to give effect to the exemption." *** and

> "The right to the exemption was a Federal right, and was specially set up and claimed as such in the petition. Whether the right was denied, or not given due recognition, by the supreme court, is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way."

This Court held the taxes levied in the cited case were invalid.

In Carpenter v. Shaw, 280 U.S. 363, 74 L.ed. 478, this Court on certiorari reversed a judgment of the Oklahoma Supreme Court sustaining the validity of a tax of that state imposed upon royalty in petroleum and gas produced from land allotted to an Indian pursuant to special agreement between the United States and the Indian tribe which land under the

agreement was to remain not taxable for a stated period, and which period had not expired when the tax was levied. The Court in declaring the tax invalid held that the land having been granted under a special agreement with the Indian tribe that the land shall be exempt from taxation such exemption could not be impaired by an act of congress subsequent to the making of the agreement and which latter act declared such land taxable. The Court said (first paragraph second column page 481 of 74 L.ed.):

"While, in general, tax exemptions are not to be presumed and statutes conferring them are to be strictly construed (Heiner v. Colonial Trust Co. 275 U.S. 232, 72 L.ed. 256, 48 Sup. Ct. Rep. 65), the contrary is the rule to be applied to tax exemptions secured to the Indians by agreement between them and the national government. Choate v. Trapp, supra (224 U.S. 675, L.ed. 945, 32 Sup. Ct. Rep. 565). Such provisions are to be liberally construed. Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith. Hence, in the words of Mr. Justice M'Lean, "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense." Worcester v. Georgia, 6 Pet. 515, 582, 8 L.ed 483, 508. See Kansas Indians, 5 Wall. 737, 760, 18 L.ed. 667, 674. And they must be construed not according to their technical meaning but "in the sense in which they would naturally be understood by the Indians." Jones v. Meehan, 175 U.S. 1, 11, 44 L.ed. 49, 54, 20 Sup. Ct. Rep. 1.

"Whatever was the meaning of the present ex-

emption clause at the time of its adoption must be taken to be its effect now, since it may not be narrowed by any subsequently declared intention of Congress. Choate v. Trapp, 224, U.S. 665, 56 L.ed. 941, 32 Sup. Ct. Rep. 565."

One of the leading cases referred to in the various decisions by this Court and by Circuit Courts of Appeal on questions of Indian rights is Choate v. Trapp, 224 U.S. 665, 56 L.ed. 941. In the cited case the Court was considering the effect of an exemption from taxation of Indian land granted an Indian under special agreement between his tribe and the United States where Congress later passed an act expressly declaring such land was subject to taxation and under which latter act the state of Oklahoma attempted to tax the Indian land. The language of the decision, in view of the similarity between the provisions of the Oklahoma Constitution and those of the Montana "Enabling Act" heretofore quoted at page 31, and the agreements of 1886 with the Blackfeet Tribe, 25 Stat. 113 is pertinent to the questions present in the instant case. We quote from the opinion of the Court commencing with paragraph 2 of the first column on page 944 of 56 L.ed:

"The individual Indian had no title or enforceable right in the tribal property. But as one of those entitled to occupy the land, he did have an equitable interest, which Congress recognized, and which it desired to have satisfied and extinquished. The Curtis act was framed with a view of having every such claim satisfactorily settled. And though it provided for a division of the land in severalty, it offered a patent of nontaxable land only to those who would relinquish their claim in the other property of the Tribe formerly held for their common

use. For the Atoka agreement, after declaring that "all land * allotted should be nontaxable," stipulated further that each enrolled member of the Tribes should receive a patent framed in conformity with the agreement, and that each Choctaw and Chickasaw who accepted such patent should be held thereby to assent to the terms of this agreement, and to relinquish all of his right in the property formerly held in common.

"There was here, then, an offer of nontaxable land. Acceptance by the party to whom the offer was made, with consequent relinquishment of all claim to other lands, furnished a part of the consideration, if, indeed, any was needed, in such a case, to support either the grant or the exemption."

The Court in stating the rule of construction to be observed in dealings between the United States and the Indian (paragraph 6, top of page 946 of 56 L.ed.) said:

"But in the government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years, and has been applied in tax cases.

"For example, in Kansas Indians (Blue Jacket v. Johnson County) 5 Wall. 737, 760, 18 L.ed. 667, 674, the question was whether a statute prohibiting levy and sale of Indian lands prevented a sale of state taxes. The rule of strict construction would have compelled a holding that the property was liable. But Justice Davis, in speaking for the court, said that "enlarged rules of construction are

adopted in reference to Indian treaties." He quoted from Chief Justice Marshall, who said that "the language used in treaties with the Indians shall never be construed to their prejudice, if words be made use of which are susceptible of a more extended meaning."

In the comparatively recent case of Jackson County v. United States, 308 U.S. 343, 84 L.ed. 313, this Court followed the rule of Ward v. Love County, and Carpenter v. Shaw, above cited. In the opinion delivered by Mr. Justice Frankfurter, referring to the exemption of the Indian's land from taxation (at top of first column page 317 of 84 L.ed.), it is said:

"Nothing that the state can do will be allowed to destroy the federal right which is to be vindicated. *** The state will not be allowed to invade the immunities of Indians no matter how skillful its legal manipulations."

In the following decisions District Courts and Circuit Courts of Appeal have held, in grants by trust patents of land under special agreement and also under the general allotment act, the provision for holding of the land in trust vests the Indian grantee with a vested property right of immunity from taxation and which continues in existence notwithstanding subsequent legislative attempts of congress to withdraw the exemption.

Glacier County v. United States,
99 F. (2d) 733,

United States v. Glacier County,
17 F. Supp. 411,

Board of Com'rs v. United States,
100 F. (2d) 929,

United States v. Board of Com'rs,
6 F. Supp. 401,

United States v. Benewah County,
290 F. 628.

United States v. Nez Perce County,
95 F. (2d) 232,

United States v. Hammer, 195 F. 790,

United States v. Joyce, 240 F. 610,

United States v. Louis County,
95 F. (2) 236, 238,

Morrow v. United States, 243 F. 854,

Board of Com'rs v. United States,
87 F. (2d) 55,

United States v. Ferry County,
39 F. Supp. 1007.

Many more decisions to the same effect may be found. We cite the foregoing as indicating the general belief of the Courts as to nonliability for taxes under circumstances similar to those of the instant case.

We believe the proper construction of the fee patent issued to John Vielle confirms unto the Indian the exempt character from taxation of the land. Under the trust patent the Indian held the land with the exemption and immunity from taxation as a right belonging to or appurtenant to the land, as long as same was held in trust by the United States. In the fee patent the language expressly grants the land to the Indian and to his heirs with all rights, immunities and appurtenances, of whatsoever nature, thereunto belonging (R. 24, 25). It would seem that the express

language of the fee patent was sufficient to preserve for the Indian and his heirs the immunity and right of exemption from taxation and for this further reason the land should be declared nontaxable.

2. Valid application for a fee patent was not made by the Indian patentee.

The Montana Court's finding that John Vielle had applied for the fee patent (R. 65) may not stand when the facts disclosed by his affidavits are considered with the facts of nondelivery and nonacceptance of the fee patent. It is true that court held neither the affidavits nor the fact of nondelivery and nonacceptance of the fee patent may be considered. This view is contrary to the express requirement of the general allotment act of 1887, 25 U.S.C.A. 348, which states: "The patents aforesaid shall be recorded in the General Land Office and afterwards delivered free of charge to the allottee." The rule relative to patents for public land should not be applicable to Indians as the government is dealing with persons under disabilities (wards of the government dependent upon its protection and good faith), Carpenter v. Shaw, 280 U.S. 363, 74 L.ed. 478. The importance of this statutory requirement for delivery of the patent is immediately apparent since its observance will enable the Indian to learn if he has been misled into applying for a patent when it may have been represented to him he was signing an instrument of a totally different character. He may then protect his rights by refusal to accept same and have the patent revoked. In the instant case the Indian's attempt to

protect himself was denied by the very department of the government established for his protection.

This Court has held that in a quiet title action a party to the action could attack a patent issued where the Interior Department had no right to issue same and also that a void patent issued in violation of a statute could be attacked collaterally; Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10, 80 L.ed. 9; Wright v. Roseberry, 121 U.S. 488, 30 L.ed. 1039.

As to the validity of the application for fee patent the affidavits of the Indian patentee disclose: (a) He could sign his name but otherwise neither read nor write, (b) he never knowingly applied for a fee patent, (c) has never sold or mortgaged or otherwise disposed of the land, (d) he signed the application believing he was signing an oil partnership agreement, (e) when he learned a fee patent had issued he refused to accept same and he never wanted a fee patent, (f) he immediately requested the Indian department to cancel same (R. 40, 48, 49). The patent was never delivered to the Indian and remains in the custody of the Indian Department (R. 38-39). Apparently the application for patent was never sworn to by the Indian (R. 42-43) although the letter of the Indian Commissioner (R. 46) states it was sworn to before one Horace G. Wilson, July 1, 1920.

These facts clearly indicate that the patent was a "forced patent," i.e. not one issued upon a voluntary request knowingly made by the Indian.

Glacier County v. United States,
99 F (2d) 733.

The conduct of the Indian at all times after learning of the issuance of the patent showing his resistance to its issue and repeated endeavors to obtain its cancellation is consistent with the statements contained in his affidavits and indicates the truth of such statements.

We respectfully submit the application of the Indian is void as he never knowingly executed the same.

The foregoing discussion applies to specifications of error (a) to (e) inclusive (ante pp. 27, 28) and to questions presented in the petition numbered 1 to 3 inclusive (ante pp. 15-18).

3. The order of the trial court requiring deposit of money by defendants under section 2214 Revised Codes of Montana and entry of default decree against defendants and affirmance of the decree by the Montana Supreme Court deprived the defendants of their property without due process of law.

The defendants' answer and cross-complaint (R. 3-10), their answer to the order to show cause (R. 12, 14-18) and their motion to quash the order to show cause (R. 13, 14), filed in the trial court, attacked the alleged tax title of the plaintiff in the action as being wholly void as such title was based upon a tax sale for taxes which were null and void. The order for money deposit (R. 18, 19) made the deposit of the sum ordered a condition precedent to defendants' right to a trial of the issues raised by their answer and cross-complaint and had same been complied with and thereafter it was decided the tax was void and that defendants were the owners of the land this money would have been paid over to plaintiff under

section 2214 Revised Codes of Montana. Thus the defendants would have been compelled to pay money on a void tax and would constitute confiscation of their property. When the defendants did not make the deposit as ordered a default decree was entered against them which denied them the right to submit proof of the invalidity of the tax and their ownership of the land. Briefly stated defendants were denied their "day in court."

Amendment 14 article 1 of the Constitution of the United States expressly provides, among other things, as follows:

> "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The right of a litigant to be heard on the merits is guaranteed by the foregoing provision.

Windsor v. McVeigh,
93 U.S. 274, 23 L.ed. 914,

Mitchell v. Banking Corp.,
94 Mont. 183, 22 Pac. (2d) 155.

CONCLUSION

The final determination by this Court of the questions of law involved in this case is of the utmost importance to rights of the many Indian allottees of land, that, unless the errors in the decision of the Montana Supreme Court be corrected, regrettable confusion regarding questions of law affecting Indian allotted lands of considerable value will ensue with attendant multiplicity of suits and the expenditure of

substantial sums of money occasioned by such suits.

We respectfully submit that the questions suggested by the petition should be definitely settled by this Court.

Respectfully submitted,

E. J. McCABE,
Great Falls, Montana,
Attorney for Petitioners.

S. J. RIGNEY,
Cut Bank, Montana,
Of Counsel.

APPENDIX

The following is a true copy of the specifications of error contained in the brief of petitioners filed in this case in the Supreme Court of Montana, as appellants in that court:

"1. The Appellants submit that the District Court erred in making its Order of October 6, 1942, filed and entered October 13, 1942 (R. 23 to 25), requiring the Appellants, defendants below, to "deposit in this Court to the use of the Plaintiff and to abide the result of this action, the sum of $1,270.51, representing the sum paid by the plaintiff to Glacier County, Montana, the amount of taxes paid by plaintiff upon said lands and the amount reasonably expended by plaintiff in preserving and making improvements upon said property as aforesaid, and should the defendants fail to make such deposit within the time aforesaid, decree quieting title to said lands in plaintiff shall be entered herein."

a. The Appellants made a motion to quash the Order to Show Cause (R. 16-18). This was overruled by the Court and that order was erroneous as viewed by the Appellants for the reasons stated in the motion.

2. That the Court erred in refusing to permit the Appellants to appear and submit evidence in support of the answer to the Complaint for the reason that the Answer had been filed and served before the Respondent demanded the Appellants to pay in the tax and improvement moneys. The Answer in and of itself set up that the taxes had been illegal and null

and void and that the tax deed was null and void because no taxes were lawfully levied and assessed against the said lands. (R. 4-12.) If the land was not legally assessed and taxes legally levied then there was no tax legally due and the Appellants could not be required to deposit the same. The improvements in themselves were and are subject to the legality of the tax assessment and levy.

3. That the judgment of the Court is contrary to the law and the evidence."

Due service and receipt of a copy of the within
hereby submitted this.....day of May, 19

.....

Counsel for Respondent

(24)

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1944.

No. 1280

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the Estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABEL VIELLE, THERESA JARVIS, and MARTHA VIELLE GALLINEAUX,

Petitioners,

vs.

FRANK L. CHATTERTON,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

H. C. HALL,
414 Strain Building,
Great Falls, Montana.
Attorney for Respondent.

SUBJECT INDEX

Table of Authorities

A. Decisions:

IN THE

SUPREME COURT

OF THE

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October Term, 1944.

No.....

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the Estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABEL VIELLE, THERESA JARVIS, and MARTHA VIELLE GALLINEAUX, Petitioners,

vs.

FRANK L. CHATTERTON, Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF MATTER INVOLVED.

This statement of the matter involved is made to correct certain statements contained in the petition and to supply omissions therein.

On January 24th, 1921, The United States issued to John Vielle, an Indian of the Blackfeet Tribe, a trust patent to lands within the Blackfeet Reservation. This

patent was issued in lieu of a similar patent issued May 23rd, 1918. (R. pp. 37, 38.)

On July 1st, 1920, Vielle made written application for the issuance to him of a fee patent covering all of the lands involved in the trust patents. (R. pp. 42, 43.) The application was signed by John Vielle and sworn to before Horace G. Wilson, the Supervisor of The Blackfeet Reservation. (R. pp. 46, 58.)

The original application thus signed and sworn to was forwarded to The Indian Office at Washington, D. C. (R. p. 41.) with a letter from the Chief Clerk of The Blackfeet Agency recommending the issuance of a fee patent. (R. p. 45.)

Under date of November 22nd, 1920, the Supervisor of the Agency advised the Commissioner of Indian Affairs that Vielle was competent to manage his own affairs and recommended issuance of fee patent. (R. p. 44.)

On December 20th, 1920, the Secretary of The Interior approved the application for fee patent and referred it to the Commissioner of The General Land Office for action. (R. p. 46.)

On January 25th, 1921, fee patent was issued to Vielle, (R. pp. 23, 24.) After recording, (R. p. 25), the fee patent was forwarded to The Blackfeet Agency where it was at the time of trial. There is no record of the patent having been actually delivered to Vielle. (R. p. 39.)

The land was assessed for taxation purposes by Glacier County, Montana, in 1921. The taxes were not paid and the land was sold for taxes. On July 3rd, 1929, tax deed was issued to Glacier County for taxes, penalty and interest then due amounting to $464.55. (R. pp. 27-29.)

On April 10th, 1931, more than ten years after the issuance of the fee patent and more than two years after the issuance of tax deed, Vielle filed an affidavit with the Superintendent of The Blackfeet Agency stating that he *never applied for the fee patent;* that he never wanted a fee patent or represented that he was capable of handling his own affairs. He asked for a cancellation of the fee patent. (R. pp. 40, 41.) This affidavit was transmitted to The Indian Office at Washington, D. C. apparently, with letter from the Superintendent dated March 11th, 1932. (R. p. 46.) The Commissioner of Indian Affairs replied on March 30th, 1932, that the records of that office disclose "that John Vielle made application for the fee patent in question, and that said application is in his own handwriting and sworn to before Horace G. Wilson on July 1st, 1920." The Commissioner held that there were no grounds for cancellation of the patent and returned all papers to the Agency. (R. p. 46.)

On September 12th, 1932, Vielle made and filed a further affidavit with The Indian Superintendent, (Exhibits 11 and 12, R. pp. 47-49.) In this affidavit he admits signing the application for fee patent, but states that he "did not know that a fee patent would issue to me but that I was signing partnership papers with Louis S. Irvin and George Starr to go into the oil business." He states that he refused to accept the patent and did not want it. He asked again that the fee patent be cancalled. This affidavit was transmitted to the Commissioner of Indian Affairs on October 11th, 1932. (R. p. 50.) On October 26th, 1932, the Commissioner replied that, "as stated in our letter of March 30th, 1932, John Vielle having made application for fee patent, which application

was sworn to before Superintendent Wilson July 1st, 1920, his recent affidavit stating that he did not know he was making application for fee patent does not vitiate this formal application, and, therefore, there are no grounds for cancellation of the fee patent in question." (R. p. 58.)

In the year 1933 Chatterton leased the land from Glacier County, (R. p. 32) and, on November 7th, 1935, contracted to purchase the land for the price of $756.00 (R. p. 31.) He completed his contract payments and in addition paid the taxes assessed against the land for the years 1936 to 1941 inclusive. The total paid by him to and including the year 1941 was $870.51 exclusive of interest. (R. pp. 30, 31.) In addition Respondent expended a considerable sum of money in improving the land. (R. pp. 32-34.)

On October 22nd, 1940, Glacier County gave Respondent a quit claim deed to the property. (R. pp. 25-26.)

John Vielle died on July 8th, 1941. (R. p. 51.) Between October, 1932, and the date of his death he took no steps, either in the Interior Department or the courts, to review the decision of The Commissioner of Indian Affairs rendered on October 26th, 1932. (R. p. 58.) During this ten year period Respondent bought the land and expended money in its improvement.

Although there is no proof of that fact, it appears that on November 17th, 1941, Mary Lukin was appointed Administratrix of John Vielle's estate. (R. p. 2.)

On November 29th, 1941, Respondent commenced an action in The District Court of Glacier County, Montana, to quiet his title to the lands in question. (R. pp. 2, 3.) On December 24th, 1941, the defendants filed their Answer and Cross-Complaint in the action. (R. pp. 3-10.)

In the Answer and Cross-Complaint it is stated that the defendants (petitioners herein) are heirs at law of John Vielle, deceased. (R. p. 4.) The proof, however, only shows that Peter Vielle, (R. p. 51), Mary Lukin, (R. p. 54), and Isabelle Jarvis, (R. p. 55), were related to him.

The Answer and Cross-Complaint after denying that Respondent is the owner and in possession of the lands admits that defendants claim some interest and estate therein. (R. pp. 3, 4.) By two separate defenses and Cross-Complaints the defendants set up:

1. That the fee patent was issued by the United States to John Vielle "without his having made application therefor, against his will and without his consent," and that he never accepted the patent and refused to accept the same. (R. p. 5.) That the lands were not subject to taxation under the provisions of sections 348 and 349, Title 25 U. S. C. A. That the tax deed to Glacier County is, therefore, void as is the deed from Glacier County, Montana, to Respondent. (R. pp. 7, 8.)

2. That the proceedings under which Glacier County took tax deed to the land did not comply with the statutory requirements of the State of Montana. (R. p. 9.)

It thus appears that petitioners had two separate and distinct theories: (1) The land was not subject to taxation under the Federal Statutes; (2) The tax deed proceedings did not comply with the Montana Statutes. Since petitioners contested the validity of the tax deed proceedings under the Montana Statutes, Respondent on April 15th, 1942, filed an affidavit in the action under the provisions of section 2214 Revised Codes of Montana, 1935, setting up payments made by him in purchasing

the land, in payment of taxes thereon, and in improving the same. (R. pp. 10-12.) Order to Show Cause was issued, (R. p. 12), and petitioners moved to quash and answered, raising the same questions as had been raised by their original Answer and Cross-Complaint. (R. pp. 13, 14-18.) On April 22nd, 1942, the case came on for hearing under the Order to Show Cause and the Answer thereto, the hearing being limited to two questions: (1) The amount paid by Respondent for purchase price, taxes and improvements; (2) whether the land was subject to taxation by Glacier County. (R. p. 22.)

At the hearing the Answer was deemed denied without the necessity of a written reply. (R. p. 23.) The Respondent introduced in evidence the fee patent from The United States to John Vielle, (R. pp. 23-25); the tax deed to Glacier County, (R. pp. 27-29); and, the quit claim deed from Glacier County to himself, (R. pp. 25, 26.) He also introduced evidence with respect to amounts paid by him for the land together with taxes and improvements thereon. (R. pp. 29-35.) Petitioners introduced in evidence the trust patent, (R. pp. 37, 38); the affidavits made by John Vielle in 1931 and 1932, heretofore noticed, (R. pp. 40-41, 47-49); a letter from the Superintendent transmitting one of the affidavits, (R. p. 50); and, some evidence regarding the value of the improvements on the land, (R. pp. 51-57.) Defendants also introduced evidence to show that the Agency had no record of the delivery of the fee patent to John Vielle, (R. pp. 38, 39), and that Vielle could not read and could only write his name. (R. p. 53.)

No objection was made by petitioners to the introduction in evidence of the tax deed to Glacier County, (R.

p. 27), and no attempt was made to show that the tax proceedings were void under the State Statutes. Respondent introduced in evidence the application of John Vielle for fee patent from the Agency files, (R. pp. 42, 43), the approval thereof by the Supervisor, the Chief Clerk and the Secretary of The Interior, (R. pp. 44, 45, 46), and the decisions of The Commissioner of Indian Affairs refusing a cancellation of the patent. (R. pp. 46, 58.) Both parties then rested and the matter was submitted to the Court. (R. p. 58.)

On October 6th, 1942, the District Court of Glacier County entered its Order, (R. pp. 18, 19), finding, (1) That John Vielle became the owner in fee simple of the land on January 25th, 1921; (2) that thereafter Glacier County assessed and levied taxes on the land and that such taxes were valid; (3) that John Vielle failed to pay the taxes levied and Glacier County acquired the land by tax deed; (4) that Glacier County deeded the land to Respondent who paid therefor and expended thereon $1,270.51. The Order required that within 30 days petitioners should deposit in Court the above sum "to abide the result of this action," and that "should said defendants fail to make such deposit within the time aforesaid, decree granting title to said lands in plaintiff shall be entered herein." No deposit was made by petitioners as ordered and on November 10th, 1942, their default was entered, (R. pp. 61, 62), final hearing was had, (R. pp. 59-60), and on November 18th, 1942, final decree was entered in favor of Respondent. (R. pp. 19-21.) From this decree an appeal was taken to The Supreme Court of Montana. (R. p. 63.) The only specifications of error set out in petitioners' Brief in The State Supreme Court appear on

pages 45 to 46 of petitioners' Brief here. On December 12th, 1944, The State Supreme Court affirmed the lower Court's decree. (R. pp. 65-69.) Petition for rehearing was filed on January 9th, 1945. (R. pp. 69-78.) On January 12th, 1945, objections to a rehearing were filed, (R. pp. 79-87), and on January 23rd, 1945, a rehearing was denied. (R. p. 88.) Then followed this proceeding by Writ of Certiorari.

SUMMARY OF ARGUMENT.

1. The uncontradicted evidence shows that Vielle on July 1st, 1920, made an application for fee patent to the lands here involved; that he was found to be competent to manage his own affairs; that his application for fee patent was approved by the proper officers and issued by the proper department of The United States. Such officers and departments acted within their jurisdiction and the patent so issued cannot be declared void in a collateral proceeding such as this, brought 20 years after the issuance of such patent, and the findings and decisions of The Secretary of The Interior are conclusive. In any event, the ex parte affidavits of the deceased upon which petitioners rely to show a mistake of their ancestor in making the application are wholly insufficient as evidence to justify the State Court in declaring the fee patent void.

2. Where a patent has been applied for, and such application is approved by The Secretary of The Interior who orders the issuance of the patent; and, thereafter the patent is signed, sealed and recorded and forwarded for delivery, an actual, manual delivery to the grantee is not necessary to pass title.

3. Where a fee patent has been issued upon the application of the Indian the land covered by such fee patent

then becomes subject to taxation by the State authorities under the provisions of section 349, Title 25 U. S. C. A. (34 Stat. 182.) In all the cases relied upon by petitioners the fee patent was issued without the application or consent of the Indian. The cases decided by this Court which are here relied upon by petitioners were all decided under different Statutes and different facts.

4. The petitioners were given the right and opportunity to show that the lands were not subject to taxation by the State and they availed themselves of this opportunity. Only after all of the evidence upon this matter was in did the Court find that the taxes were valid and require the petitioners to deposit money in Court to abide the result of the action in so far as the validity of the tax deed proceedings under the State laws were concerned. The requirements of section 2214 of the Montana Codes as interpreted by the State Courts did not deprive petitioners of property without due process of law.

5. There is no proof of heirship so far as concerns the petitioners and they have no standing in this Court.

ARGUMENT

1. *The fee patent issued to John Vielle is valid as against the attack here made.*

The evidence is uncontradicted that on July 1st, 1920, a written application for a fee patent, signed and sworn to by John Vielle before The Superintendent of The Blackfeet Agency was lodged with that Superintendent by Vielle. (R. pp. 42-43, 58.) The Agency Superintendent found Vielle capable of managing his own affairs free from government supervision and recommended issuance of fee patent. (R. p. 44.) The application for fee patent

was transmitted to The Secretary of The Interior with recommendations for its issuance. (R. p. 45.) The Secretary of The Interior approved the recommendation and referred it to The Commissioner of The General Land Office for action. (R. p. 46.) The General Land Office issued and recorded the patent and transmitted it to The Agency Superintendent. (R. pp. 23-25.) The attack made upon the fee patent by the Answer and Cross-Complaint was that it was issued "without his having made application therefor, against his will and without his consent." (R. p. 5.) The fee patent was introduced in evidence by Respondent as a part of his title papers. It is the highest evidence of title it is possible to introduce.

Pittsmont Copper Co. v. Vanina,
71 Mont. 44, 227 Pac. 46.

The petitioners do not show a better title in themselves, but now attack the issuance of the fee patent because of an alleged *mistake* on the part of Vielle when he signed the application. No such mistake was alleged in petitioners' Answer and Cross-Complaint in the lower Court. In any event, such an attack is collateral and will not be permitted.

St. Louis S. & R. Co. v. Kemp,
104 U. S. 636, 26 L. Ed. 875;

United States v. Maxwell Land Grant Co.,
121 U. S. 325, 30 L. Ed. 949;

De Guyer v. Banning,
167 U. S. 723, 42 L. Ed. 340;

Pittsmont Copper Co. v. Vanina,
71 Mont. 44, 227 Pac. 46.

The jurisdiction of The Commissioner of Indian Affairs, The Secretary of The Interior, and the General Land Office over the land is beyond controversy.

By specific Statute, (24 Stat. 390, 34 Stat. 182, Title 25 U. S. C. A. sec. 349), it is provided:

> "That The Secretary of The Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrances, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent."

Before the Secretary can act there must be either an application for the patent by the Indian or his consent to its issuance.

United States v. Benewah County,
290 Fed. 628;

Glacier County v. United States,
99 Fed. (2d) 733;

United States v. Nez Perce County,
95 Fed. (2d) 232;

Larkin v. Pough,
276 U. S. 431, 72 L. Ed. 640;

44 Stat. 1247, Title 25 U. S. C. A. sec. 352 a.

We have here an application for fee patent signed and sworn to by the Indian. We have a finding of competency by the proper authorities. We have approval of the application by all of the governmental officers from the Agency Superintendent to The Secretary of The Interior. We have acquiescence by Vielle for the periods of January, 1921, to April, 1931, a period of more than 10 years, and from October, 1932, to December, 1941, when petitioners' Answer and Cross-Complaint in this action was filed.

The cases of:

Borax Consolidated, Ltd. v. City of Los Angeles,
296 U. S. 10, 80 L. Ed. 9;

Wright v. Roseberry,
121 U. S. 488, 30 L. Ed. 1039;

cited by petitioners, (pp. 22, 41), are not in point. There is here no lack of jurisdiction or authority, but at most the issuance of a patent upon a mistake made by the grantee and not by any officer of the government. Under such circumstances the findings and action of The Commissioner and Secretary are conclusive, in the absence of a direct proceeding to have the patent declared void.

Small v. Rakestraw,
28 Mont. 413, 12 Pac. 746;

Graham v. Great Falls W. P. & T. Co.,
30 Mont. 393, 76 Pac. 808;

Love v. Flahive,
33 Mont. 348, 83 Pac. 882;

50 C. J. 1081, sec. 471.

In any event, the ex parte affidavits of John Vielle, conflicting in their statements, and containing hearsay conclusions and self serving declarations, were not admissible as proof of any mistake on the part of Vielle; nor were they admissible under the pleadings.

Sec. 10636, R. C. M. 1935;

31 C. J. S. 948 et seq;

Gilcrest v. Bowen,
95 Mont. 44, 24 Pac. (2d) 141.

Proper objection to their admission was made. (R. pp. 40, 47.)

2. *Manual delivery of the patent was not necessary to convey title to Vielle.*

The fact that the p patent was not manually delivered to Vielle is of no conseq equence.

United States v. Schurz,
102 U. S. 378, 26 L. Ed. 167;

State v. Monroe,
83 Mont. 556, 568, 274 Pac. 840.

The patent here was s applied for by Vielle; was issued upon order of The Secr cretary of The Interior; was signed and sealed and duly re ecorded; and, was transmitted for delivery.

Except for the inadm missible affidavits there is no evidence that the patent w was not kept in the Agency files because Vielle wanted i it there. His acquiescence for ten years leads to a belief t that such was the fact.

3. *Upon issuance of the fee patent the land became subject to taxation by Glacier County.*

The Federal Statute e under which the fee patent in question was issued, (34 34 Stat. 182, Title 25 U. S. C. A. sec. 349), provides that at after issuance of fee patent,

"all restrictions as to sale, incumbrances, or taxation of said land shall be e removed."

Such provision must t be read as a part of the patent in question.

Swendig v. Washington Water Power Co.,
265 U. S. 322, 68 L. Ed. 1036;

There is nothing in any treaty between The United States and The Blackfeet Tribe (25 Stat. 13), or in any Statute, (Act of Feb. 8, 1887, Title 25 U. S. C. A. sec. 348), or in The Enabling Act of Montana, (25 Stat. 676), quoted on pages 29 to 32 of petitioners' brief which limits the right of Congress to remove the immunity from taxation existing during the trust period, where the fee patent is issued *upon the application of the Indian or with his consent.*

In all of the cases cited by petitioners on pages 38 and 39 of their brief it appeared by stipulation or evidence that the fee patent was issued without the application of the Indian or without his consent. None are in point here. Thus in Glacier County v. United States, 17 Fed. Supp. 411, 99 Fed. (2d) 733, there was an express stipulation to such effect.

In Jackson County v. United States, 308 U. S. 343, 84 L. Ed. 313, it appeared that the fee patent was issued over the objection of the Indian.

In Ward v. Love County, 253 U. S. 17, 64 L. Ed. 751, no patent in fee issued under 34 Stat. 182 was involved. The land was merely allotted under a law which provided that "the lands shall be nontaxable while the title remains in the original allottee."

The same is true so far as concerns Carpenter v. Shaw; 280 U. S. 36, 74 L. Ed. 478; and Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941.

The decision of The Supreme Court of Montana in this case, (154 Pac. (2d) 798), is based upon an entirely different Statute and upon an entirely different set of facts than were involved in the above decisions and is not in conflict therewith.

4. *The order of the Court requiring deposit of money under the provisions of section 2214 Revised Codes of Montana and entry of default decree did not deprive petitioners of their property without due process of law.*

Under the provisions of section 2214 Revised Codes of Montana, 1935, (quoted at pages 19 and 20 of petition) the lower court, upon application that money be deposited, is required to first determine whether the land involved was legally subject to taxation.

State ex rel Jensen v. Dist. Ct.,
103 Mont. 461, 64 Pac. (2d) 835;

State ex rel Souders v. Dist. Ct.,
92 Mont. 272, 12 Pac. (2d) 852.

Such was the purpose of the hearing held on April 22nd, 1942. (R. p. 22.) At that hearing the petitioners were accorded every opportunity to introduce evidence on that question. After such hearing the lower Court specifically found, (R. p. 18), "that the taxes so assessed and levied by Glacier County, Montana, were in all respects valid." Only after such finding did the Court require the deposit of any money to abide the result of the action.

No objection was made by petitioners to the introduction in evidence of the tax deed, (R. p. 27), and, no attempt was made by them to show that the tax proceedings were void.

In its opinion The Supreme Court of Montana said, (R. p. 68):

> "The appellants put their defense on the ground that the lands in question were exempt from state tax levies and from sale upon non-payment of taxes, a defense which we have found to be untenable."

Under the construction placed upon section 2214 by The Supreme Court of Montana, that Statute does not offend against either section 1 of the Fourteenth Amendment or the 5th Amendment to The United States Constitution.

Wilson Real Estate Co. v. Milwaukee, (Wis.)
138 N. W. 642;

Lombard v. McMillan, (Wis.)
70 N. W. 673;

Eberhard v. Purcell, (Ida.)
296 Pac. 593;

Moore v. Byrd, (N. C.)
23 S. E. 968;

State ex rel Souders v. Dist. Ct.,
92 Mont. 272, 12 Pac. (2d) 852.

Before the entry of the default decree, or any order in the case, the petitioners were afforded the right to contest the validity of the tax. Of this opportunity they availed themselves, both in the lower and The Supreme Court. When, upon the evidence submitted the Court found that the tax was valid, petitioners no longer had any property rights to be protected, other than the right to contest the tax deed proceedings under the limitations of section 2214. This they refused and they may not now complain.

The statements appearing in the petition herein, (pp. 14, 18), and the brief in support thereof, (pp. 42, 43), that petitioners were denied the opportunity to show the invalidity of the tax are wholly incorrect and unwarranted.

5. *Petitioners have no standing in Court.*

Petitioners claim to be the heirs of the deceased, John Vielle. (R. pp. 4, 7 and 9.) This was denied by the Respondent. (R. p. 23.) The only evidence on the matter were statements showing that Peter Vielle was the son, (R. p. 51), and Mary Lukin, (R. p. 54), and Isabelle Jarvis (R. p. 55) were daughters of the deceased. There was no proof of relationship as concerned Mary Vielle Lukin, Mary Vielle, Francis Vielle, Cecille Vielle Trombley or Martha Vielle Gallineaux.

There was no determination of heirship under the provisions of 45 Stat. 161, 48 Stat. 647, (Title 25 U. S. C. A. 372), providing that when any Indian to whom an allotment of land has been made, dies before the

expiration of the trust period and before the issuance of a fee simple patent, The Secretary of The Interior shall ascertain the legal heirs of the deceased after notice and hearing and his decision shall be final and conclusive.

6. CONCLUSION.

By their Cross-Complaints herein, the petitioners sought to have a State Court thrust upon The United States a trusteeship which its officers had twice declined. They sought in that Court to have a patent issued by The United States declared void, not because its officers did not properly issue such patent, but, because, after a period of more than 10 years, the grantee in that patent alleged he had made a mistake in applying for the patent. Petitioners do not seek to have the patent cancelled under section 352a Title 25 (44 Stat. 1247), but collaterally seek to avoid the force and effect of that patent. The evidence upon which they rely consists of ex parte affidavits, conflicting in their statements and consisting of self serving declarations, conclusions and hearsay. From 1921 to 1931 and from 1932 to 1941 their ancestor made no attack upon the fee patent. He acquiesced in the action of the officers of The United States. New rights have intervened and petitioners now refuse to reimburse Respondent for moneys paid out by him. Under such circumstances they have no standing here.

It is respectfully submitted that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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